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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Further Streamlining  
Measures for Domestic Section 214  
Authorizations

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CC Docket No. 01-150

COMMENTS OF WORLDCOM, INC.

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Dated: September 10, 2001

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## **SUMMARY**

WorldCom agrees with the Commission that adopting streamlined section 214 review measures will promote regulatory certainty and predictability and serve to enhance transparency in transfer of control cases. In these comments, WorldCom (WorldCom) provides its suggested rule changes for streamlining domestic section 214 applications involving transfers of control or assignments of licenses of non-dominant carriers and transfers of control of dominant carriers. With respect to discontinuances, the last six months have taught the lessons of how difficult it is to transition local exchange customers – and especially DSL customers – to other platforms when a local carrier discontinues service. WorldCom suggests the Commission adopt a uniform 60-day notice period for section 214 discontinuances involving the provision of exchange services subject to the Commission's jurisdiction. The new rules should also clearly delineate the rules that apply to internal corporate reorganizations so that internal reorganizations can be undertaken with a minimum of delay. Lastly, WorldCom recommends that the Commission should determine on a case-by-case basis whether to accord streamlined treatment to domestic section 214 applications that are accompanied by waiver requests.

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**COMMENTS OF WORLDCOM, INC.**

**I. Introduction**

WorldCom agrees with the Commission that adopting streamlined section 214 review measures will promote regulatory certainty and predictability and serve to enhance transparency in transfer of control cases.<sup>1</sup> In these comments, WorldCom (WorldCom) provides its suggested rule changes for streamlining domestic section 214 applications involving transfers of control or assignments of licenses of non-dominant carriers and transfers of control of dominant carriers. With respect to discontinuances, the last six months have taught the lessons of how difficult it is to transition local exchange customers – and especially DSL customers – to other platforms when a local carrier discontinues service. WorldCom suggests the Commission adopt a uniform 60-day notice period for section 214 discontinuances involving the provision of exchange services subject to the Commission’s jurisdiction. The new rules should also clearly delineate the rules that apply to internal corporate reorganizations so that internal reorganizations can

be undertaken with a minimum of delay. Lastly, WorldCom recommends that the Commission should determine on a case-by-case basis whether to accord streamlined treatment to domestic section 214 applications that are accompanied by waiver requests.

## **II. Adopting Streamlined Section 214 Review Measures Will Promote Important Commission Goals.**

WorldCom agrees with the Commission that adopting streamlined section 214 review measures will promote important goals. The adoption of rules that clearly identify certain classes of applications that are eligible for streamlined review will promote regulatory certainty and predictability and serve to enhance transparency in transfer of control cases. In addition, the adoption of streamlined section 214 rules will facilitate the Commission's expeditious dispensation of domestic section 214 applications, minimize applicants' transaction costs, and simplify the application process.

But there are other important goals that adoption of streamlined section 214 rules should promote. First and foremost, the Commission should ensure that its new rules enhance the predictability of the domestic section 214 application process. It is extremely important that the new rule be unambiguous, since the structure and timing of various transactions must take into account the transfer of section 214 authorizations. Further, the Commission should ensure that important public interest concerns, such as the control of the exercise of market power and the promotion of competition in the local exchange market, are adequately protected by its new streamlined rules. This pro-competition

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<sup>1</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, Declaratory Ruling and Notice of Proposed Rulemaking*, CC Docket No. 01-150 (rel. July 20, 2001) at ¶ 20 ("Streamlining NPRM").

objective is compelled by the Telecommunications Act of 1996, and is a fundamental concern of the non-dominant, competitive segment of the telecommunications industry.

### **III. The Commission Must Clearly Identify the Types Of Streamlining That Apply In Different Contexts.**

As the Commission tentatively concludes, there are categories of applications that should automatically qualify for streamlined treatment.<sup>2</sup> “Streamlining,” however, has no inherent meaning and is, in fact, defined in different ways depending upon the type of application at issue.<sup>3</sup> As a logical corollary to determining the type or types of streamlining that might apply, the rules must also make evident the types of applications that do not qualify for streamlined treatment.

As a preliminary matter, the Commission should make clear that streamlining is not forbearance from the application of the Commission’s section 214 powers.<sup>4</sup> In its consideration of whether to forbear from applying section 214 to non-dominant carriers,<sup>5</sup> the Commission correctly noted that the public interest required that blanket authority be adopted rather than forbearance so that the Commission would retain an enforcement mechanism against abusive practices by carriers.<sup>6</sup> Similarly, conferring “blanket authority” on all domestic interstate carriers to construct and operate domestic transmission lines, instead of simply rescinding the requirement that carriers obtain

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<sup>2</sup> *Streamlining NPRM* at ¶ 20.

<sup>3</sup> *See, e.g.*, 47 C.F.R. § 63.12.

<sup>4</sup> 47 U.S.C. § 214(a).

<sup>5</sup> *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 F.C.C.R. 11364, 11370, ¶ 8 (“1999 Streamlining Order”).

<sup>6</sup> *Id.* at 11373, ¶¶ 15-16.

authorization to operate, enabled the Commission to retain the ability to enforce its rules.<sup>7</sup> In sum, with all of the consumer protection issues the Commission must manage (e.g., its anti-slamming rules and its truth-in-billing rules), it is helpful to have section 214 authority in the Commission's enforcement tool kit.

WorldCom suggests that the Commission adopt two types of streamlining that would apply in different contexts. The simplest type of streamlining would apply to transactions where no public interest concerns are raised. These transactions will be defined below.<sup>8</sup> For this defined set of transactions, after-the-fact notice to the Commission that a section 214 authorization has been transferred is sufficient. The transferee need only notify the Commission that the transaction has been consummated no later than 30 days after the transfer.

Where potential public interest concerns may exist, an advance notice process similar that outlined in the streamlining rules for international common carrier section 214 applications should be applied.<sup>9</sup> This process would require a filing by the applicant simply stating that the transaction qualifies for streamlining pursuant to the rule adopted in this proceeding. The Commission would then issue a Public Notice stating that 30 days (for transfers involving only non-dominant carriers) or 60 days (for transfers involving dominant carriers) after the public notice date, the application is deemed granted. There would be no formal comment cycle, but parties could object, orally or in writing, to the transfer, and based on those objections or the Commission's own review, the application

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<sup>7</sup> *Id.* at 11364.

<sup>8</sup> *See infra* sections III & V.

<sup>9</sup> 47 C.F.R. § 63.12.

could be removed from the from streamlined processing line.<sup>10</sup>

As a logical matter, some applications will be ineligible for the streamlined process. In these cases, the applicant would be required to provide a public interest statement with its application. The Commission would institute a public comment cycle, following which either the Bureau(s) or the Commission would issue an order. To enhance the predictability of this process, WorldCom suggests that the Commission establish a delegated authority rule that permits the Bureau to act on transfers of control or assignments of licenses below a certain value. Above that value, grant of the application would need to be approved by the Commission.

#### **IV. Merger And Acquisition Issues**

At the outset, WorldCom notes that its comments are meant to apply to transfers of control or assignments of licenses involving blanket domestic 214s only. These comments do not apply to transfers or assignments of spectrum licenses or international 214 applications. The Commission is correct that most of the major merger and acquisition activity in recent years has involved common carriers that do have spectrum licenses. As a practical matter, since many of these types of licenses continue to require a public notice period and public interest statement in the event of a transfer or assignment, many common carrier transactions will continue to receive non-streamlined review, regardless of the Commission's actions here.<sup>11</sup>

Market power continues to play a central role in telecommunications regulation. A large number of domestic common carriers, i.e., the incumbent local exchange carriers,

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<sup>10</sup> *Streamlining NPRM* at ¶ 32.

<sup>11</sup> *Id.* at ¶ 34.



continue to operate as the dominant providers of local exchange and exchange access providers in their traditional operating areas.<sup>12</sup> WorldCom submits that any streamlining plan take into account whether, in an assignment or transfer case, the assignment or transfer will result in additional concentration in the geographic and product markets where the incumbent local exchange carrier serves. By drawing these distinctions, different types of streamlining can be applied, as described below.

**A. Transfer or assignment from a non-dominant carrier to a non-dominant carrier.**

The Commission has tentatively concluded that there are categories of applications that should automatically qualify for streamlined treatment.<sup>13</sup> The Commission's tentative conclusion is right: after-the-fact notice to the Commission is sufficient for transfers or assignments involving only non-dominant carriers. This type of transaction does not raise public interest concerns. As previously noted, transfers or assignments involving large non-dominant carriers will be governed by spectrum license procedures that will require a full-blown public interest statement, comment cycle, and Bureau(s) or Commission order.<sup>14</sup> In WorldCom's view, it is only smaller, fiber optic-

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<sup>12</sup> See *id.* at n.21. Under the Commission's rules, a "dominant" carrier is a carrier found by the Commission to have market power (e.g., power to control prices). 47 C.F.R. § 61.3(q). A "non-dominant" carrier is a carrier not found to be dominant. 47 C.F.R. § 61.3(y).

<sup>13</sup> *Streamlining NPRM* at ¶ 20.

<sup>14</sup> See, e.g., *Applications of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 1, 21, 24, 25, 63, 73, 78, 90, and 101*, Application for Consent to Transfer Control, CC Docket No. 99-333, filed November 17, 1999. Even a company as small as Intermedia had spectrum licenses. See *Application of Intermedia Communications, Inc., Transferor, and WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, and 101 of the*

based interexchange and competitive local exchange carriers who would operate solely pursuant to a domestic 214.<sup>15</sup> Transactions involving these carriers, even if purchased by a large non-dominant carrier, raise no public interest issues. The Commission should subject these transfers or assignments to after-the-fact notice.

In support of this result, WorldCom reminds the Commission that there is a glut of long-haul capacity installed in the United States. A recent report by Merrill Lynch estimates that less than 3% of installed fiber is actually lit.<sup>16</sup> Concentration of long-haul transport is simply not an issue. With respect to non-dominant local exchange carriers, the unfortunate reality of the year 2001 has been that some concentration of these assets is necessary and desirable. As a result, WorldCom believes that after-the-fact notice to the Commission is sufficient for transfers or assignments involving only non-dominant carriers. The Commission should therefore require that non-dominant carriers provide the Commission notice of the transfer no later than 30 days from the date the transfer is consummated.

**B. Transfer or assignment to or from a non-dominant carrier to a dominant carrier.**

Because potential public interest concerns could be raised in a transfer or assignment to or from a non-dominant carrier to a dominant carrier, the Commission should apply the advance notice type of streamlining described in section II of these comments to this type of transaction.<sup>17</sup> Under this type of streamlining, an applicant would be required to file a statement indicating that the transaction qualifies for

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*Commission's Rules*, Application for Consent to Transfer Control, CC Docket No. 00-206, filed October 23, 2000.

<sup>15</sup> Even cable companies entering the telephony or data markets have CARS licenses.

<sup>16</sup> "How the Fiber Barons Plunged the Nation into a Telecom Glut," *Wall Street Journal* at A1 (June 18, 2001).

streamlining pursuant to the rule adopted in this proceeding. The Commission would then issue a Public Notice stating that 30 days after the public notice date, the application is deemed granted. There would be no comment cycle, but parties could object to the transfer, orally or in writing. On the Commission's own motion, or after considering objections, the Commission could at its discretion remove applications from streamlined review.

In determining whether an application is eligible for this type of streamlined treatment, the Commission should take into account whether, in an assignment or transfer case, the assignment or transfer will result in additional concentration in the geographic and product markets of the acquiring carrier. Thus, if a dominant local exchange carrier is acquiring local exchange carrier assets and customers outside of its local service area, then the transaction should be eligible for advanced notice streamlined review. However, if the carrier is acquiring dominant local exchange carrier assets and customers within its local exchange carrier service area, then the transaction should be ineligible for streamlined review. This will ensure that local exchange markets already dominated by the incumbent local exchange carrier do not become more concentrated as a result of an incumbent's purchase of another carrier without meaningful Commission review.

The rules should specify that this type of transfer would be ineligible for streamlined review if a dominant carrier is acquiring a non-dominant carrier and that acquisition raises section 271 compliance issues. Even if the dominant provider offers a section 271 "solution," the lessons of the Qwest and U.S. West mergers and the Bell

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<sup>17</sup> See *infra* section II.

Atlantic and GTE mergers is that thorough scrutiny of section 271 compliance is necessary.

In the case of a transfer or assignment a dominant carrier to a non-dominant carrier, the non-dominant carrier may become “dominant” with respect to the dominant local exchange operations that it bought. Thus, if the buyer operates as a non-dominant local exchange carrier, and is acquiring dominant LEC operations within its local exchange carrier service area, then it should be ineligible for streamlined review. However, if buyer operates as a non-dominant local exchange carrier, and is acquiring local exchange carrier assets and customer outside of its local exchange carrier service area, then it should be eligible for advanced notice streamlined review.

**C. Transfer or assignment to or from a dominant carrier to a dominant carrier.**

This type of transfer would be ineligible for streamlined review if the dominant carrier acquiring another dominant carrier raises a section 271 issue. Further, if an acquiring dominant carrier is seeking to combine its local exchange carrier operations with another dominant carrier’s local exchange carrier operations within the acquiring dominant carrier’s service area, the transfer would not be eligible for streamlining. However, an advanced notice streamlining process would be available to the acquiring dominant carrier if that carrier is seeking to combine local exchange carrier operations that were previously outside the its service area.

This process would require a filing by the applicant simply stating that the transaction qualifies for streamlining pursuant to the rule adopted in this proceeding. The Commission would then issue a Public Notice stating that 60 days after the public notice date, the application is deemed granted. There would be no formal comment cycle, but

parties could object, orally or in writing, to the transfer, and based on those objections or the Commission's own review, the application could be removed from the streamlined processing line at the Commission's discretion.<sup>18</sup>

## **V. Discontinuance Issues**

In WorldCom's view, approving transfers of domestic section 214 discontinuances in cases involving physical connections to end users only 31 days after public notice does not give carriers discontinuing local exchange service sufficient time to transition its customers to another carrier in a seamless manner. WorldCom urges the Commission to consider extending this period to at least 60 days. Under section 214(a) of the Communications Act, a petition to discontinue service cannot be granted where to do so would adversely affect the public convenience and necessity. WorldCom's experience shows that DSL customers need longer than 31 days to make alternative service arrangements. DSL providers have networks that include loops homed to colocation spaces in incumbent local exchange carriers' central offices. To transition these customers, and in particular business customers, it is necessary to obtain T-1 special access service. Given T-1 provisioning time frames today, there is absolutely no possibility that all, or even most, of a large DSL carrier's customers would be able to make alternative service arrangements on a single month's notice.

For example, in the Rhythms discontinuance case<sup>19</sup>, Rhythms officially notified WorldCom on August 10th of its intention to discontinue service on September 10th. This allowed only 19 business days for all circuit migrations to occur. A review of the

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<sup>18</sup> *Streamlining NPRM* at ¶ 32.

steps that must be taken in order to complete the migration of customer circuits from Rhythms to WorldCom shows that these migrations could not possibly be completed with a 30-day interval. WorldCom must first review alternative service options, pricing, contracts, and migration plans with each DSL customer. Customers must consider these options and make a decision before an order can be submitted. This step can take from 5 to 10 business days.

Once a customer has made a decision, the order must be processed and an Access Service Request (“ASR”) must be submitted to the ILEC. Intervals for fulfilling the ASR can range from 5 to 15 days, depending on many variables such as available facilities, customer location, and order volume, and can well exceed 20 days in some cases. As the Commission should be aware, ILEC special access provisioning is woefully inadequate and is getting worse. At a time when provisioning performance is already trending negatively, the addition of hundreds of orders initiated by the Rhythms discontinuance will undoubtedly result in poorer ILEC performance.

Securing a replacement circuit from the ILEC is only one step in the process. New equipment must be ordered and installed to support the replacement service (e.g., DSL modems, new frame relay cards or equipment). With so many customers seeking replacement equipment simultaneously, inventories will be depleted and delivery intervals will increase. Intervals that averaged 5-10 business days will likely increase to 10-20 days.

Once the equipment has been delivered and installed, the underlying service must be tested. Many customers are large frame relay customers with multiple locations that

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<sup>19</sup> *Application of Rhythms Links to Discontinue Domestic Telecommunications Services,*

require each location to complete a satisfactory test to the host site before actually migrating service. Taking into consideration the number of customers, the number of locations, and the necessary coordination of testing and migration scheduling, 60-90 days is a more realistic time frame for completing DSL circuit migrations.

Similarly, CLECs that own their own facilities to the customer need longer than 31 days make alternative service arrangements. Such transfers require replacement facility, equipment and testing. The Commission should extend this period to 60-90 days in order to give such carriers sufficient time to order necessary equipment, provision T-1s and conduct tests.

Unlike transfers or assignments of domestic section 214 authorizations in cases involving physical connections to end users, transfers of customers of an interexchange carrier that is discontinuing service presents an easier case, as an interexchange carrier's customer base virtually always is acquired by another carrier. A streamlined PIC process is already in place, so the transfer is usually fast and seamless. Further, the streamlined rules governing unauthorized transfers of customers work well. Similarly, 30 days' advance notice should be sufficient for transfers involving customers of UNE-P based CLECs.

#### **VI. After-The-Fact Notice Is Sufficient For Internal Corporate Reorganizations.**

In the *Streamlining NPRM*, the Commission seeks comment on what, if any, treatment should apply where an internal corporate restructuring results in a new or existing subsidiary assuming interstate carrier operations under section 214 from an

existing parent or affiliated company.<sup>20</sup> The Commission suggests that *pro forma* treatment might be afforded such transactions, requiring notification only, with no prior approval. In WorldCom's view, corporations need to be free to reorganize as they see fit or necessary, so minimal processes should apply. Thus, the after-the-fact notice that WorldCom suggests should apply to transfers involving only non-dominant carriers is sufficient.

**VII. The Commission Should Determine On A Case-By-Case Basis Whether To Accord Streamlined Treatment To Domestic Section 214 Applications That Are Accompanied By Waiver Requests.**

WorldCom supports the Commission's tentative conclusion it should decide on a case-by-case whether to accord streamlined treatment to domestic section 214 applications that are accompanied by waiver requests.<sup>21</sup> Section 416(b) of the Communications Act expressly authorizes the Commission to suspend or modify its orders upon such notice and in such manner as it deems proper.<sup>22</sup> Additionally, pursuant to section 1.3, the Commission is permitted to waive its rules for good cause.<sup>23</sup> It is well established that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>24</sup> To justify a modification of the Commission's rules and satisfy the public interest standard, a waiver request must be consistent with the procompetitive goals of the Communications Act. Because the Commission must subject waiver requests to additional scrutiny, WorldCom recommends that domestic section 214 applications that are accompanied by waiver

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<sup>20</sup> *Streamlining NPRM* at ¶ 28.

<sup>21</sup> *Id.*

<sup>22</sup> 47 U.S.C. §416(b).

<sup>23</sup> 47 U.S.C. §1.3.



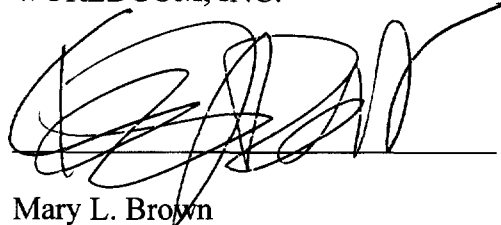
requests should be ineligible for streamlined treatment until the Commission determines on a case-by-case basis that the appropriate waiver analysis is not jeopardized by the streamlined review process. Thus, the Commission should determine on a case-by-case basis whether to accord streamlined treatment to domestic section 214 applications that are accompanied by waiver requests.

### **VIII. Conclusion**

WorldCom respectfully recommends that the Commission adopt rules for streamlining domestic section 214 applications involving transfers of control or assignments of licenses of non-dominant carriers and transfers of control of dominant carriers as suggested herein.

Respectfully Submitted,

WORLDCOM, INC.

A handwritten signature in black ink, appearing to read 'Mary L. Brown', is written over a horizontal line.

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Dated: September 10, 2001

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<sup>24</sup> See, e.g., *Northeast Cellular Telephone Co., v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

## **Certificate of Service**

I, Barbara Nowlin, do hereby certify, that copies of the foregoing Comments of WorldCom, Inc. regarding the matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations has been sent to the following this 10<sup>th</sup> day of September 2001.

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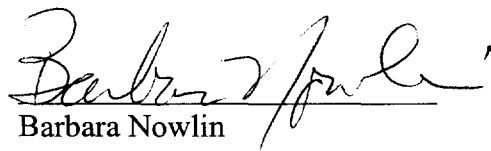
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